

ORIGINAL

DEF
C/M

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

-against-

KENNETH MCGRUFF, DENNIS CROSBY,
ALVIN DEREK SMILEY, BARRY
BROUGHTON, and RUSSELL ALLEN,

Defendants.
-----x

MEMORANDUM AND ORDER

Case No. 04-CR-968(S-7)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.

★ SEP 20 2006 ★

BROOKLYN OFFICE

BLOCK, Senior District Judge:

By letter dated September 11, 2006, the Government requests a six-week adjournment of jury selection for the trial against defendant Kenneth McGriff ("McGriff"), currently scheduled to begin on October 31, 2006. Although McGriff's counsel would prefer a longer adjournment (to fall 2007), they do not oppose the Government's request.

While the Court recognizes that it cannot empanel a jury before the Second Circuit issues its mandate, it is also mindful that jury selection in this case will, by necessity, require significant preparation time. The Court's Jury Coordinator intends to mail out 1,000 jury notices on September 22, 2006, and expects that approximately 500 will report on October 23rd to fill out questionnaires. Counsel will then spend the next week reviewing the completed questionnaires and preparing a list of approximately 150 potential jurors, who will then be summoned to report for formal jury selection on October 31st.

Adjourning jury selection will undoubtedly impact the start of trial. Given the expected length of trial, it has proven extraordinarily difficult to coordinate the availability of counsel and the Court. Trial was originally scheduled to begin on March 6, 2006, and was then adjourned to April 3rd and April 17th before the Court set the current

date. In addition, the Court took the unusual step of asking a colleague in the Southern District to reschedule a murder trial from January 2007 to February 2007 in order to accommodate McGriff's learned counsel's availability.

Although, for reasons that are unclear, McGriff's learned counsel apparently does not oppose a six-week adjournment of the trial date, such an adjournment would disrupt the Court's own trial calendar and render nugatory its efforts to set aside a significant block of time to try this case. In sum, the Court's principal concern is that aborting the current trial schedule would result in a delay, not of weeks, but of many months. That McGriff was first indicted on January 18, 2005, only exacerbates the effect of the delay.

The Government's request for an adjournment is therefore denied, subject to reconsideration should the circuit court not render its decision and issue its mandate in sufficient time for jury selection to proceed and for trial to commence as currently scheduled.

The Government is directed to forthwith transmit a copy of this Memorandum and Order to the Second Circuit, together with an appropriate forwarding letter, so that the circuit court will be fully apprised of the Court's concerns.

SO ORDERED.

/signed/

FREDERIC BLOCK
United States Senior District Judge

Brooklyn, New York
September 15, 2006